

## **CHAPTER 81-09-03 OIL EXTRACTION TAX**

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**81-09-03-01. Application of oil and gas gross production tax rules to the oil extraction tax.** All rules and regulations adopted in chapter 81-09-02 for the administration of the oil and gas gross production tax law, not in conflict with the provisions of the oil extraction tax law, shall apply to and govern the administration of the oil extraction tax law.

**History:** Effective July 1, 1982.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51.1-05

**81-09-03-02. Definitions.** As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definitions apply:

1. "Completion" or "completed" means an oil well will be considered completed when the first oil is produced through wellhead equipment after production casing has been run.
2. "Drilled" means the spudding of a well.
3. "Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered

and recompleted as a horizontal well. As applied to the horizontal reentry of a vertical well, a reentry means the reentering of a well that has been plugged as determined by the industrial commission under section 43-02-09-01.

4. "Incremental production" means the oil which has been classified as incremental by the industrial commission pursuant to subsections 5 and 6 of North Dakota Century Code section 57-51.1-03.
5. "New well" means a well initially drilled and originally completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission.
6. "Nonincremental production" means the oil which has not been classified as incremental by the industrial commission.
7. "Reservoir" means a common source of supply as defined by the industrial commission.
8. "Test oil" means oil recovered during and after drilling but before normal completion of a well.
9. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the enforcement of spacing requirements. This definition is only effective for periods prior to April 27, 1987.

**History:** Effective August 1, 1986; amended effective October 1, 1987; March 1, 1990; June 1, 1992; April 1, 1996; April 1, 2006.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(3)

**81-09-03-03. Determination of a property - Operator's election to designate individual wells as separate properties.** Repealed effective September 1, 1997.

**81-09-03-04. Designation of a property on an individual well basis - Notification by operator.** Repealed effective September 1, 1997.

**81-09-03-05. Rate reduction for qualifying secondary and tertiary recovery projects.** Repealed effective June 1, 2002.

**81-09-03-05.1. Tax incentives for qualifying secondary recovery projects.**

1. The exemption for incremental production from a qualifying secondary recovery project starts with the first day of the first month in which incremental oil is produced from the project.
2. The nonincremental production from a qualifying secondary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 5 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

**History:** Effective June 1, 1992; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-01(5)(6)

#### **81-09-03-05.2. Tax incentives for qualifying tertiary recovery projects.**

1. The exemption for incremental production from a qualifying tertiary recovery project starts with the first day of the first month in which incremental oil is produced from the project.
2. The nonincremental production from a qualifying tertiary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 6 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.
3. The exemption and rate reduction may be eliminated as of the first day of the first month in which the unit ceased to be operated as a qualified project if the industrial commission determines that the unit operator is not continuing to operate the unit as a qualifying tertiary recovery project.

**History:** Effective June 1, 1992; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-01(5)(6)

**81-09-03-05.3. Reporting requirements for secondary and tertiary recovery projects.**

1. **Categorization and taxation of production.** The unit operator must report on a form prescribed by the commissioner all of the oil produced from the project. The aforementioned production is categorized and taxed in the following manner:
  - a. If the five-year or ten-year exemption is in effect, any incremental production is exempt from the oil extraction tax.
  - b. If the applicable exemption period has expired, any incremental production is subject to extraction tax at a rate of four percent.
  - c. Any nonincremental production attributable to stripper wells, new wells, and worked-over wells is exempt from the oil extraction tax. The volume of this exempt nonincremental production must be calculated by multiplying the actual production from any stripper wells, new wells, and worked-over wells by a fraction the numerator of which is the lesser of the volume of oil projected pursuant to the production decline curve or the total volume of oil produced from the project and the denominator of which is the total volume of oil produced from the project.
  - d. If a project has been certified as qualifying for a reduced extraction tax rate, any nonincremental production which is not otherwise exempt is subject to extraction tax at a rate of four percent.
  - e. If a project has not been certified as qualifying for a reduced extraction tax rate, any nonincremental production which is not otherwise exempt is subject to extraction tax at a rate of six and one-half percent.
  - f. If a project has not been certified as qualifying for a reduced extraction tax rate, any nonincremental production attributable to new wells that are no longer exempt is subject to extraction tax at a rate of four percent. The volume of nonincremental production subject to this reduced rate must be calculated by multiplying the actual production from any new wells that are no longer exempt by a fraction the numerator of which is the lesser of the volume of oil projected pursuant to the production decline curve or the total volume of oil produced from the project and the denominator of which is the total volume of oil produced from the project.
2. **Payment of tax.** Tax must be paid on all nonexempt oil produced from the project during each month of production. For reporting purposes, oil produced but not sold in the month of production should be valued based on the taxpayer's average sales price for any oil that was sold during the month.

3. **Remittance of tax.** Tax may be remitted by the unit operator or the unit's working interest owners. However, if tax will be remitted by any working interest owner, the unit operator must provide on a form prescribed by the commissioner the name and address of each working interest owner that will be remitting tax along with the percentage of ownership interest on which the tax will be remitted. In addition, the tax remitted by any working interest owner must be calculated based on the production reported by the unit operator.

**History:** Effective June 1, 1992.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-01(5)(6)

**81-09-03-06. New well exemption for vertical and horizontal wells.**

1. A new vertical well and a new horizontal well exemption starts with the date the well was completed.
2. The fifteen-month and twenty-four month exempt periods run consecutively from the date the well is completed even though all or a portion of the new well exemption may be rendered ineffective by the oil price trigger discussed below.
3. Only one new well exemption is allowed per well bore. The well bore of a horizontal well consists of both the vertical and horizontal segments.
4. To be eligible for the new well exemption, the commissioner must receive notification of the well's completion in a report from the industrial commission. The commissioner will verify the date the well was completed and issue an exemption letter to the operator. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The tax commissioner will accept the information subject to confirmation upon audit.

**History:** Effective October 1, 1987; amended effective March 1, 1990; June 1, 1992; April 1, 1996; June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(3)

**81-09-03-07. Stripper well exemption.** Oil produced from a stripper well property is exempt from the oil extraction tax.

To be eligible for the stripper well exemption, a producer must have its property certified as a stripper well property by the industrial commission and must

submit a copy of the certification received from the industrial commission to the tax commissioner.

**History:** Effective October 1, 1987; amended effective June 1, 1992.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(2), 57-51-19

**81-09-03-08. Work-over exemption.** The twelve-month period runs consecutively from the first day of the third month after completion of the work-over project, even though all or a portion of the exemption may be rendered ineffective by the oil price trigger.

The commissioner must receive a work-over qualification letter signed by a representative of the industrial commission stating that the work-over project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The letter must also provide the following information:

1. The name of the lease.
2. The location of the well.
3. The name of the party entitled to the tax exemption.
4. The average daily production of the well during the latest six calendar months of continuous production.
5. The cost of the work-over project.
6. The average daily production of the well during the first sixty days after completion of the work-over project, if the cost of the work-over project is sixty-five thousand dollars or less.
7. The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

**History:** Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; June 1, 2002; April 1, 2006.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03

**81-09-03-09. Trigger provision applicable to oil extraction tax rate.** The trigger becomes effective starting with the first day of the first month following the five-month period in which the average price exceeded the trigger price. The oil extraction tax percentage will revert back to the reduced or exempt rate beginning on the first day of the first month following the five-month period in which the

average price of crude oil was below the trigger price provided the wells still qualify for the reduced rate or exemption. The trigger provisions do not apply to stripper wells, wells drilled on Indian land, or incremental production from an enhanced recovery project.

**History:** Effective June 1, 1992; amended effective August 1, 1994; June 1, 2002; April 1, 2006.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03

#### **81-09-03-10. Horizontal reentry well exemption.**

1. The designation of a horizontal reentry well is given to a well initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. This designation may also apply to the reentry and recompletion of a vertical well that is classified by the industrial commission as a dry hole.
2. The nine-month exempt period runs consecutively from the date the horizontal reentry well is recompleted even though all or a portion of the exemption may be rendered ineffective by the oil price trigger described in this section.
3. Test oil from a horizontal reentry well is exempt from the oil extraction tax. The well bore of a horizontal reentry well consists of both the vertical and horizontal segments.
4. After the nine-month exempt period expires, oil produced from a horizontal reentry well is subject to the same oil extraction tax rate that was applicable before the exempt period.
5. The commissioner must receive a qualification letter signed by a representative of the industrial commission stating the dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

**History:** Effective April 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(7)

#### **81-09-03-11. Two-year inactive well exemption.**

1. A two-year inactive well exemption starts with the first day of the month in which the industrial commission's certification of well status is received by the tax commissioner.

2. A two-year inactive well is a well that has not produced oil in more than one month in any consecutive twenty-four-month period. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.
3. The inactive well exemption is applicable to all oil produced during the exemption period after the well is certified as a two-year inactive well.
4. The ten-year exempt period runs consecutively from the month the tax commissioner receives the industrial commission's certification even though all or a portion of the inactive well exemption may be rendered ineffective by the oil price trigger described in this section.
5. To be eligible for the inactive well exemption, the commissioner must receive a copy of the industrial commission's certification stating that the well qualifies as a two-year inactive well. The certification must be submitted to the commissioner within eighteen months after the two-year inactive well's qualification period to receive the exemption from the first day of eligibility. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

**History:** Effective April 1, 1996; amended effective June 1, 2002; April 1, 2006.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(6)